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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2013-372*

12 **GUSTAVO GUTIERREZ**
13 **145 S. Chapparral Court, Suite. 101**
14 **Anaheim Hills, CA 92808**

A C C U S A T I O N

15 **Registered Nurse License No. 553198**
Nurse Anesthetist Certificate No. 3073

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 16, 1999, the Board of Registered Nursing issued Registered
24 Nurse License Number 553198 to Gustavo Gutierrez (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2014, unless renewed.

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3. On or about February 5, 2004, the Board of Registered Nursing issued Nurse Anesthetist Certificate Number 3073 to Gustavo Gutierrez (Respondent). The Nurse Anesthetist Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

10. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

11. California Code of Regulations, title 16, section 1443.5, states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

1 **COSTS**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FACTS**

7 13. On or about March 13 of 2008, Maria G. had surgery for liposuction, fat transfer to
8 the buttocks and vaginoplasty¹ at the Hills Surgical Institute, Inc. Maria G. died as a result of
9 massive blood loss due to complications from her surgery.

10 14. In January of 2008, Respondent opened the Hills Surgical Institute, Inc., as an officer
11 and shareholder. In his role as part owner and officer of the surgical institute, Respondent
12 participated in the screening of and hiring of a surgeon to conduct patient Maria G.'s cosmetic
13 surgery.

14 15. Respondent hired Dr. H. to perform Maria G.'s surgery, without knowing his recent
15 experience and current ability to perform vaginoplasty and cosmetic surgeries. Dr. H. had not
16 performed a vaginoplasty procedure in almost five years. Respondent hired Dr. H. to perform
17 surgery without ever interviewing him regarding his experience or qualifications.

18 16. Respondent informed Dr. H. that he was to perform Maria G.'s vaginoplasty and
19 cosmetic surgery the day before it was scheduled to occur and Respondent paid Dr. H. for
20 performing the surgery.

21 17. In addition to his duties as a shareholder and officer, Respondent was part of the team
22 that performed the surgery on patient Maria G. Respondent acted as the nurse anesthetist during
23 Maria G.'s surgery, which was performed with the patient under general anesthesia.

24 18. As the a nurse anesthetist, Respondent was required to stay with the Maria G. during
25 the entirety of the surgery, and was required to monitor her condition including vital signs.
26 During the surgery, Respondent left the surgery room. Respondent's absence left Maria G.

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28 ¹ Plastic surgery of the vagina. Also called colpoplasty.

1 unattended by a nurse anesthetist. Respondent was away from the surgery room for
2 approximately one-half hour. During Respondent's absence, Maria G.'s condition began to
3 rapidly deteriorate. Respondent was found by an assistant, and called back into the surgery room.
4 Maria G. died as a result of massive blood loss due to complications from her surgery.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Gross Negligence)**

7 19. Respondent is subject to disciplinary action for unprofessional conduct under Code
8 section 2761 subdivision (a)(1) and as defined by California Code of Regulations, title 16, section
9 1442 in that the care Respondent provided to Maria G. was an extreme departure from the
10 standard of care, which under similar circumstances, would have ordinarily been exercised by a
11 competent registered nurse. Respondent knew, or should have known, that his actions could have
12 jeopardized the client's health or life. The circumstances are detailed in paragraphs 13 -18 above,
13 which are incorporated herein by reference, and as follows:

14 a. When Respondent served as patient Maria G.'s nurse anesthetist, he left her
15 unattended for one-half hour. Maria G. died as a result of massive blood loss due to
16 complications from her surgery.

17 b. As an owner and officer in the Hills Surgical Institute, Inc., Respondent hired
18 Dr. H to perform patient Maria G.'s vaginoplasty and cosmetic surgery without knowing the
19 doctor's experience and current ability to perform the surgery.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct - Incompetence)**

22 20. Respondent is subject to disciplinary action for unprofessional conduct under Code
23 section 2761 subdivision (a)(1) and as defined by California Code of Regulations, title 16, section
24 1443 in that in the treatment of Maria G., Respondent did not possess or failed to exercise the
25 degree of learning, skill, care and experience ordinarily possessed and exercised by a competent
26 registered nurse. The circumstances are detailed in paragraphs 13-18 above, which are
27 incorporated herein by reference, and as follows:
28

1 a. When Respondent served as patient Maria G.'s nurse anesthetist, he left her
2 unattended for one-half hour. Maria G. died as a result of massive blood loss due to
3 complications from her surgery.

4 b. As an owner and officer in the Hills Surgical Institute, Inc., Respondent hired
5 Dr. H to perform patient Maria G.'s vaginoplasty and cosmetic surgery without knowing the
6 doctor's experience and current ability to perform the surgery.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:


10 1. Revoking or suspending Registered Nurse License Number 553198, issued to
11 Gustavo Gutierrez;

12 2. Revoking or suspending Nurse Anesthetist Certificate Number 3073, issued to
13 Gustavo Gutierrez;

14 3. Ordering Gustavo Gutierrez to pay the Board of Registered Nursing the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;

17 4. Taking such other and further action as deemed necessary and proper.

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19 DATED: November 5, 2012


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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